IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6290 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GIRISHBHAI RAMJIBHAI KAHAR

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

1. Special Civil Application No. 6290 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of detention dated 8.4.2002 passed against him by the Commissioner of Police, Surat City, in exercise of the powers conferred under Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as the PASA Act). The petitioner has been branded as "bootlegger" within the meaning of Section 2(b) of the PASA.

2. The detaining authority, while arriving at the subjective satisfaction to detain the petitioner as a "chronic bootlegger", has considered the involvement of the petitioner in a prohibition case registered against the petitioner with Rander Police Station on 31.1.2002 for the offences punishable under the provisions of the Bombay Prohibition Act. On 31.1.2002, Rander Police had raided bungalow on information received and police has recovered and seized prohibited liiquor worth Rs. 87,900/, and the petitioner was also arrested on the same day along with other co-accused Dinubhai Patel. The detaining authority also placed reliance on the statements of two unnamed witnesses recorded by the sponsoring machinery on 31.3.2002 and verified by the detaining authority on 1.4.2002. The impugned order of detention came to be passed on 8.4.2002 and same was executed on the very same day.

3. Mr. A.S.Dave, ld. counsel appearing for the petitioner has taken this Court through the bunch of papers supplied to the detenu along with grounds of detention. The petitioner has challenged the legality and validity of the order of detention on number of grounds, but ld. counsel appearing for the petitioner has concentrated and restricted his arguments mainly on two points. He has submitted, firstly, that this is a solitary incident and powers vested in the authority under Section 3 of the PASA could not have been exercised on such a solitary incident. The second point argued is that even for the sake of arguments it is accepted that the detenu is involved in such activities, those activities are not such which can be said to be prejudicial to the "public order", but at the most, the same can be said to be prejudicial to "law and order". This shows total non-application of mind and mechanical exercise of the powers. While enlarging his arguments, it has been submitted that the statements of the witnesses have been recorded mechanically and after a lapse of reasonably good period, the order of detention is passed. It is also argued that on plain reading of the papers supplied to the detenu along with ground of detention, it clearly reveals that the sponsoring authority has placed statements of unnamed witnesses only with a view to create a case under the preventive detention laws. Placing reliance on the decision in the case of Anil Dey v/s State of West Bengal, 1974(4) SCC 514 and on the decision in the case of Chowdarapu Raghunandan v/s State of Tamily Nadu & Ors., AIR SCW 2002

P.1322, it is argued that extreme step of detention could not have been taken on the solitary incident. It would be beneficial to refer to relevant para-5 of the decision of the Apex Court in the Case of Chowdaarapu Raghunandan (supra) wherein the Apex Court has said :-

"5. Before deciding the contention raised by the petitioner, it is to be reiterated that the Prevention Detention is not a punitive Act and it is not alternative to criminal trial under the law. It does not empower the authority to punish a person without trial. Its purpose is to prevent a person from indulging in activities, such as smuggling and/or such other anti-social activities as provided under the Preventive Detention Law."

4. It is true that the detaining authority can pass the order of detention on the basis of a solitary incident, but the order of detention must reflect the convincing reasons for recording subjective satisfaction for detention, which is non-existent in the present case.

5. For the sake of arguments even if it is accepted that the petitioner is involved in this criminal offence, even than this wrong can be equated with maintenance of "law and order" and not "public order". It is a solitary offence and in absence of any prior antecedents involving the petitioner into any bootlegging activities, there was no scope for branding the petitioner as a "bootlegger". Prohibition case registered against the detenu cannot be said to be an activity dangerous to public health unless it is satisfactorily established. Thus, the subjective satisfaction arrived at on this count is also not genuine.

6. So, on both these counts, the impugned order of detention requires to be quashed and set aside. Under the circumstances, without entering into the merits of the other grounds raised in the petition, the impugned order of detention requires to be quashed and set aside.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 8.4.2002 passed by the Commissioner of Police, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

12-08-2002 [C. K.BUCH, J]
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